IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.246 OF 2004

Abdul Sattar Merchant & Ors. .. Petitioners
Vs.
Farid Abdul Latif Noorani. .. Respondent
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Shri D.D.Madon, Advoate with Shri J.P.Sen with Shri Ayer Bilawala with Shri Jayesh Vyas i/b M/s.Bilawala & Co. for the Petitioners.

Shri B.P.Pandey with Shri S.M.A.Kazmi for the respondent.
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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 14th December, 2004.

P.C.

1. Heard the learned advocates for the parties. Perused the records.

2. The grievance of the petitioners relates to the non-compliance of the decree dated 19th January, 1985 passed by the Small Cause Court, Bombay. It is the contention of the petitioners that it is a continuing breach of the order that has compelled the petitioners to approach the Court in the year 2004 for proceeding against the respondent for contempt of Court. The respondent, on the other hand, has clearly

stated that after passing of the decree dated 19th January, 1985, the petitioners had sought execution thereof by filing the execution application being Misc. Notice No.620 of 1987 which came to be dismissed on 1st December, 1994. Admittedly, the petitioners did not react against the said order dated 1st December, 1994 nor filed any application for execution of the decree till 18th January, 1997. In the absence of efforts by the petitioners to seek execution of the decree within 12 years from the date of the decree, it cannot be said that there is willful disobedience on the part of the respondent for non-compliance of the said decree. Undoubtedly, an attempt was made to seek execution of the said order in the year 1987 which failed in the year 1994 but there was no reaction against the order of dismissal of the execution application.

3. In the above facts, therefore, there is no case for proceeding against the respondent for contempt of Court on the ground of willful disobedience of the decree dated 19th January, 1985 and that too by initiating the contempt proceedings in the year 2004. Admittedly, the petitioners have filed another execution application and the same is pending before the Division Bench in the Writ Petition. In

these circumstances, therefore, this is not a fit case for proceeding against the respondent for contempt of Court in terms of the decree dated 19th January, 1985. Needless to say that all the observations made herein are for the purpose of deciding the application for contempt of Court against the respondent, and those observations are not in relation to the rights of the parties pertaining to the execution of the decree dated 19th January, 1985.

4. With the above observations, therefore, the contempt petition is rejected. Notice stands discharged.